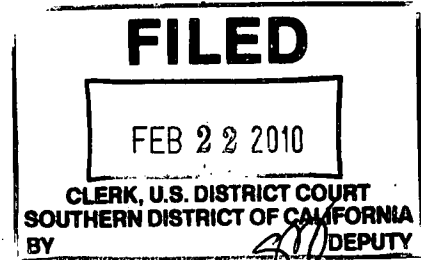


1 Joshua B. Swigart, Esq. (SBN: 225557)
 josh@westcoastlitigation.com
 2 David C. Leimbach, Esq. (SBN: 265409)
 dleimbach@westcoastlitigation.com
 3 **Hyde & Swigart**
 4 411 Camino Del Rio South, Suite 301
 San Diego, CA 92108-3551
 5 Telephone: (619) 233-7770
 6 Facsimile: (619) 297-1022



7 Attorneys for the Plaintiff

10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

<p> 13 Angelica Del Rio 14 15 Plaintiff, 16 v. 17 Client Services, Inc. 18 Defendant. 19 </p>	<p> Case Number: '10 CV 0412 BEN BLM Complaint For Damages Jury Trial Demanded </p>
---	--

21 **INTRODUCTION**

- 22 1. The United States Congress has found abundant evidence of the use of
- 23 abusive, deceptive, and unfair debt collection practices by many debt
- 24 collectors, and has determined that abusive debt collection practices
- 25 contribute to the number of personal bankruptcies, to marital instability, to the
- 26 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
- 27 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
- 28 "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

OR

ORIGINAL

1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.

13 3. Angelica Del Rio, ("Plaintiff"), through Plaintiff's attorneys, brings this action
14 to challenge the actions of Client Services, Inc., ("Defendant"), with regard to
15 attempts by Defendant to unlawfully and abusively collect a debt allegedly
16 owed by Plaintiff.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
23 were knowing and intentional, and that Defendant did not maintain
24 procedures reasonably adapted to avoid any such violation.

25 JURISDICTION AND VENUE

26 7. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
27 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
28

8. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

9. Because Defendant does business within the State of California, personal jurisdiction is established.

10. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

11. Plaintiff is a natural person who resides in the City of San Diego, County of San Diego, State of California.

12. Defendant is located in the City of St. Peters, and the State of Missouri.

13. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

14. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

15. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

16. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

17. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer

1 credit transaction. As such, this action arises out of a consumer debt and
2 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

3 **FACTUAL ALLEGATIONS**

4 18. At all times relevant to this matter, Plaintiff was an individual residing within
5 the State of California.

6 19. At all times relevant, Defendant conducted business within the State of
7 California.

8 20. Sometime before December 2009, Plaintiff is alleged to have incurred certain
9 financial obligations.

10 21. These financial obligations were primarily for personal, family or household
11 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
12 §1692a(5).

13 22. These alleged obligations were money, property, or their equivalent, which is
14 due or owing, or alleged to be due or owing, from a natural person to another
15 person and are therefore a “debt” as that term is defined by California Civil
16 Code §1788.2(d), and a “consumer debt” as that term is defined by California
17 Civil Code §1788.2(f).

18 23. Sometime thereafter, but before December 2009, Plaintiff allegedly fell
19 behind in the payments allegedly owed on the alleged debt. Plaintiff currently
20 takes no position as to the validity of this alleged debt.

21 24. Subsequently, but before December 2009, the alleged debt was assigned,
22 placed, or otherwise transferred, to Defendant for collection.

23 25. On or about January 11, 2010, Defendant telephoned Plaintiff and demanded
24 payment of the alleged debt. This communication was a “debt collection” as
25 Cal. Civ. Code 1788.2(b) defines that phrase. At this time, Plaintiff informed
26 Defendant that Plaintiff was represented by counsel, and if Defendant wished
27 to speak with Plaintiff in regards to the alleged debt, Defendant was to do so
28

1 with Plaintiff's counsel, Hyde & Swigart ("Plaintiff's Counsel"). Plaintiff
2 provided Plaintiff's Counsel's contact information at this time.

3 26. On January 11, 2010, Defendant contacted Plaintiff's Counsel, who
4 confirmed that Hyde & Swigart represented Plaintiff, and if Defendant wished
5 to speak with Plaintiff in regards to the alleged debt, Defendant was to do so
6 through Hyde & Swigart.

7 27. On January 18, 2010, Defendant contacted Plaintiff in an attempt to collect
8 the alleged debt, after Defendant knew Plaintiff was represented by Plaintiff's
9 Counsel. During this call, Defendant acknowledged that Defendant had been
10 speaking with Hyde & Swigart, but desired to communicate a settlement offer
11 directly to Plaintiff.

12 28. Without the prior consent of the consumer given directly to the Defendant or
13 the express permission of a court of competent jurisdiction, Defendant
14 communicated with the consumer in connection with the collection of a debt
15 when Defendant knew the consumer was represented by an attorney with
16 respect to such debt and had knowledge of, or could have readily ascertained
17 such attorney's name and address. Consequently, Defendant violated 15
18 U.S.C. § 1692c(a)(2). Because this violated certain portions of the federal
19 Fair Debt Collection Practices Act as these portions are incorporated by
20 reference in the Rosenthal Fair Debt Collection Practices Act, through
21 California Civil Code § 1788.17, this conduct or omission violated Cal. Civ.
22 Code § 1788.17.

23 29. On January 21, 2010, Defendant contacted Plaintiff in an attempt to collect
24 the alleged debt, and left a message on Plaintiff's answering machine, despite
25 Defendant's knowledge that Plaintiff was represented by Plaintiff's Counsel.

26 30. Without the prior consent of the consumer given directly to the Defendant or
27 the express permission of a court of competent jurisdiction, Defendant
28 communicated with the consumer in connection with the collection of a debt

1 when Defendant knew the consumer was represented by an attorney with
 2 respect to such debt and had knowledge of, or could have readily ascertained
 3 such attorney's name and address. Consequently, Defendant violated 15
 4 U.S.C. § 1692c(a)(2). Because this violated certain portions of the federal
 5 Fair Debt Collection Practices Act as these portions are incorporated by
 6 reference in the Rosenthal Fair Debt Collection Practices Act, through
 7 California Civil Code § 1788.17, this conduct or omission violated Cal. Civ.
 8 Code § 1788.17.

9 31. On February 1, 2010, Defendant contacted Plaintiff in an attempt to collect
 10 the alleged debt, despite the fact that Defendant knew Plaintiff was
 11 represented by Plaintiff's Counsel.

12 32. Without the prior consent of the consumer given directly to the Defendant or
 13 the express permission of a court of competent jurisdiction, Defendant
 14 communicated with the consumer in connection with the collection of a debt
 15 when Defendant knew the consumer was represented by an attorney with
 16 respect to such debt and had knowledge of, or could have readily ascertained
 17 such attorney's name and address. Consequently, Defendant violated 15
 18 U.S.C. § 1692c(a)(2). Because this violated certain portions of the federal
 19 Fair Debt Collection Practices Act as these portions are incorporated by
 20 reference in the Rosenthal Fair Debt Collection Practices Act, through
 21 California Civil Code § 1788.17, this conduct or omission violated Cal. Civ.
 22 Code § 1788.17.

23 24 COUNT I

25 FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

26 15 U.S.C. §§ 1692 ET SEQ.

27 33. Plaintiff repeats, re-alleges, and incorporates by reference, all other
 28 paragraphs.

1 34. The foregoing acts and omissions constitute numerous and multiple violations
2 of the FDCPA, including but not limited to each and every one of the above-
3 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

4 35. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
5 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
6 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
7 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
8 Defendant.

9 **COUNT II**

10 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)**

11 **CAL. CIV. CODE §§ 1788-1788.32**

12 36. Plaintiff repeats, re-alleges, and incorporates by reference, all other
13 paragraphs.

14 37. The foregoing acts and omissions constitute numerous and multiple violations
15 of the RFDCPA, including but not limited to each and every one of the above-
16 cited provisions of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32

17 38. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
18 any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory
19 damages for a knowing or willful violation in the amount up to \$1,000.00
20 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and
21 costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

22 **PRAYER FOR RELIEF**

23
24 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
25 Plaintiff be awarded damages from Defendant, as follows:

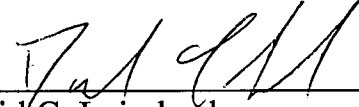
- 26 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
27 1692k(a)(2)(A);
28

- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

39. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: February 16, 2010

HYDE & SWIGART

By: 
David C. Leimbach
Attorneys for Plaintiff

HYDE & SWIGART
San Diego, California

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Angelica Del Rio

DEFENDANTS

Client Services, Inc.

FEB 22 2010

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
St. Peter's DEPUTY

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

Attorneys (If Known)

'10 CV 0412 BEN

BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1692 et seq

Brief description of cause:
FDCPA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

10443

AMOUNT

\$350 -

APPLYING IFP

JUDGE

MAG. JUDGE

PB 02-23-10

ORIGINAL

CR

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS010443
Cashier ID: mbain
Transaction Date: 02/23/2010
Payer Name: HYDE AND SWIGART

CIVIL FILING FEE
For: DEL RIO V CLIENT SERVICES
Case/Party: D-CAS-3-10-CV-000412-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3707
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.